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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,966	11/06/2001	Curtis A. Vock	397057	8991
30955	7590	01/06/2004		
LATHROP & GAGE LC 4845 PEARL EAST CIRCLE SUITE 300 BOULDER, CO 80301				
			EXAMINER WACHSMAN, HAL D	
			ART UNIT 2857	PAPER NUMBER

DATE MAILED: 01/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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09/992966

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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20

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Hal D Wachsman
Primary Examiner
Art Unit: 2857

Office Action Summary

Application No.

09/992,966

Applicant(s)

VOCK ET AL.

Examiner

Hal D Wachsman

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-22 and 26 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 12, 13, 24, 25 and 27 is/are rejected.
- 7) ☒ Claim(s) 3-11, 14 and 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) ^{corrected} filed on 30 October 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner. *Formal drawings now required.*
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 1, 2 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Busack (6,020,851) in view of Eriksson (4,089,057).

As per claim 1, Busack (Abstract, col. 4 lines 29-34) discloses the coupling step. Busack (see at least abstract) discloses the downloading data step. Busack et al. (Abstract, col. 1 lines 5-10) discloses the processing the data step with the exception of clearly disclosing that the performance being compared is athletic performance. However, Eriksson (Abstract, col. 1 lines 8, 9, 13-15) teaches this excepted feature. It would have been obvious to a person of ordinary skill in the art at the time the invention

was made to apply the techniques of Eriksson to the invention of Busack as specified above because both references deal with monitoring racing competitions, the auto race in Busack and the slalom racing events in Eriksson.

As per claim 2, Busack (Abstract, col. 3 lines 24-32) discloses the feature of this claim.

As per claim 27, Busack (Abstract, col. 3 lines 24-32) discloses the feature of this claim.

3. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Busack (6,020,851) in view of Eriksson (4,089,057) as applied to claim 1 above, and further in view of Purdy et al. (4,757,714).

As per claims 12 and 13, Purdy et al. (see at least abstract) teach the features of each of these claims. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Purdy et al. to the inventions of Busack and Eriksson as specified above because then the sensor would be able to move with the person as well as not encumber the person in the sports competition.

4. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Busack (6,020,851) in view Eriksson (4,089,057) as applied to claim 1 above, and further in view of Fry (6,002,982).

As per claim 24, Fry (Abstract, col. 2 lines 51-58) teaches the feature of this claim. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Fry to the inventions of Busack and

Eriksson as specified above because as taught by Fry (col. 1 lines 11, 12) it would facilitate the tracking and mapping of route and athlete performance parameters.

As per claim 25, Fry (col. 2 lines 51-58, col. 3 lines 8-10) teaches the feature of this claim. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to apply the techniques of Fry to the inventions of Busack and Eriksson as specified above because the appendage pressure sensor (col. 3 lines 8-10) would enable the monitoring of the heart rate of the sports participant.

5. Claims 15-22 and 26 are allowed.

6. Claims 3-11, 14 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Applicant's arguments filed 10-23-03 have been fully considered but they are not persuasive with respect to the claims that are rejected above. With respect to the arguments concerning Ericksson on page 9 of the reply, this reference as shown in both this Office Action as well as the previous Office action was only used to show the athletic performance aspect and not the mobile sensors, Internet-accessible database, etc. that is being argued here. On page 9 of the reply, the Applicant argues that "In any event, Busack does not teach attaching a mobile sensor to a plurality of persons....". However, claim 1 of the instant application states "**coupling** a mobile sensor with each of the persons" and does not state that the mobile sensor is attached to each of the persons. On this same page the Applicant argues with respect to Busack "...these are not athletic performances of a person..." however it was the Ericksson reference and

not the Busack reference that was used to show that the performance is athletic performance. On page 10 of the reply the Applicant requests specific evidence in the prior art (pursuant to MPEP 2144) that would suggest the combination and modification of Busack and Eriksson. However, MPEP 2144 (see page 2100-129) states that "The rationale to modify or combine the prior art **does not have to be expressly stated in the prior art**; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law." If Official Notice was taken (see MPEP 2144.03) in which an examiner takes official notice of facts not in the record or to rely on "common knowledge" in making a rejection, then the Applicant can request evidence of those facts. However, Official Notice was not taken in these rejections and the motivation for the combination is found in the references themselves and was provided in the rejections and as shown above does not have to be expressly stated in the prior art. On page 10 of the reply filed 10-23-03 the Applicant further states with respect to the Eriksson reference that "However, the abstract is absolutely silent as to any reference to more than one person. Moreover, in col. 1, Eriksson only discusses the measurement of a single skier (a "competitor's speed" – which is singular), and not multiple competitors as suggested by the Examiner". However, if we look at the Abstract of Eriksson, there is clearly a result screen for entries for each skier and column 1, line 8, explicitly states "In many sporting **competitions...**". The Examiner respectfully submits that to have a competition there must be more than one participant. Furthermore, col. 1, lines 13-15, of Eriksson states

"At slalom **racing** events, for example, the time of a **competitor's** speed...." in which it is self-evident that this is referring to a racing competition in which of course there is more than one person as each participant is racing against the other. Thus, it is not clear as to how the abstract or column 1 of the Eriksson reference can be considered to be "absolutely silent as to any reference to more than one person" as stated by the Applicant on page 10 of the reply.

With respect to the arguments on hindsight on pages 10 and 11 of the reply the following is respectfully noted:

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

With respect to the arguments on pages 10 and 11 of the reply concerning the structural combination of Busack and Ericksson the Examiner respectfully notes the following:

In response to applicant's arguments concerning the structure and function of Busack and Ericksson and the motivation to combine the features of the two references, the test for obviousness is not whether the features of a secondary reference may be

bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

With respect to the arguments concerning Purdy et al. on page 12 of the reply, this reference was only used to teach several features in some of the dependent claims and not the features of independent claim 1. The Applicant asks for evidence here per MPEP 2144, however no Official Notice was used in the Purdy et al. rejection as the features of rejected claims 12 and 13 are found in the Purdy et al. reference and the motivation for the combination as already shown above does not have to be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law.

With respect to the arguments concerning the Fry reference on page 13 of the reply the Applicant states "As to claim 24, attachment of a GPS receiver is taught. Nonetheless, once again Fry, Eriksson and Busack do not teach, alone or in combination, the elements of claim 1, from which claim 24 depends. " However, the Fry reference in claim 24 was used to teach only the feature of that claim and not the features of claim 1. With respect to claim 25, the Applicant argues on page 13 of the reply that Fry has no teaching of the step element "attaching a mobile pressure sensor to each of the persons". However, column 4, lines 25-27, of Fry clearly states "... a heart

rate monitor may be included, preferably in the form of a chest or appendage **pressure sensor...**”.

8. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hal D Wachsman whose telephone number is 703-305-9788. The examiner can normally be reached on Monday to Friday 7:00 A.M. to 4:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 703-308-1677. The fax phone numbers for the organization is 703-872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.


Hal D Wachsman
Primary Examiner
Art Unit 2857

HW
January 3, 2004